

HOUSE BILL NO. 453

INTRODUCED BY FUREY, BUZZAS, HENRY, MUSGROVE, HAMILTON, GUTSCHE, HINER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ADMINISTRATIVE PENALTIES UNDER THE SOLID WASTE, JUNK VEHICLE, UNDERGROUND STORAGE TANK LICENSING, AND SANITATION IN SUBDIVISION LAWS; AMENDING VENUE PROVISIONS FOR ENFORCEMENT ACTIONS; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-227, MCA, is amended to read:

"75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, a violation of an order issued under this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or ~~his~~ the violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order assessing an administrative penalty pursuant to 75-10-228, or both. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds ~~no~~ that a violation has not occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary

1 compliance through warning, conference, or any other appropriate means.

2 (5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part
3 6, apply to a hearing held under this section."

4
5 **Section 2.** Section 75-10-228, MCA, is amended to read:

6 **"75-10-228. Civil and administrative penalties.** (1) A person who violates ~~any~~ a provision of this part,
7 a rule adopted or an order issued under this part, or a license provision is subject to an administrative penalty
8 not to exceed \$500 \$250 or a civil penalty not to exceed \$1,000 \$5,000 \$1,000. Each day of violation constitutes
9 a separate violation.

10 (2) The department may institute and maintain in the name of the state any enforcement proceedings
11 under this section. The enforcement or collection action must be brought in the district court of the first judicial
12 district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF
13 MUTUALLY AGREED UPON BY THE PARTIES, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK
14 COUNTY. Upon request of the department, the attorney general or the county attorney of the county where the
15 violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

16 (3) Fines and penalties collected ~~for violations of this part~~ under this section must be deposited in the
17 solid waste management account provided for in 75-10-117."

18
19 **Section 3.** Section 75-10-540, MCA, is amended to read:

20 **"75-10-540. Administrative enforcement.** (1) When the department determines that a violation of this
21 part, a violation of a rule adopted or an order issued under this part, or a violation of a license provision has
22 occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice
23 must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a
24 violation and may include an order to take necessary corrective action within a reasonable period of time, an
25 order assessing an administrative penalty pursuant to 75-10-542, or both. The order becomes final 30 days after
26 the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of the
27 request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

28 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall
29 either affirm or change the department's order. An order may prescribe the date by which the violation must
30 cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has

not occurred, it shall rescind the department's order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 4. Section 75-10-542, MCA, is amended to read:

"75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates a provision of this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ is subject to an administrative penalty of not more than \$250 ~~\$500 \$250 \$50 or~~ a civil penalty of not more than ~~\$50 \$5,000 \$1,000~~ \$250. Each day upon which a violation of this part, ~~or a rule, or an~~ order occurs is a separate violation.

(3) The penalties provided for in this section are recoverable in an enforcement or collection action brought by the department. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED UPON BY THE PARTIES, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY."

Section 5. Section 75-11-218, MCA, is amended to read:

"75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, closure, or inspection, ~~or an order to take necessary corrective action within a reasonable time as stated in the order, or an order assessing an administrative penalty pursuant to 75-11-223.~~ Every A notice and order must be signed by the director of the department or the director's ~~deputy~~ designee and must be served personally or by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

Section 6. Section 75-11-223, MCA, is amended to read:

"75-11-223. Civil and administrative penalties. (1) ~~Any~~ A person who violates ~~any~~ a provision of this part, a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty not to exceed \$500 per violation or a civil penalty not to exceed \$10,000 per violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. The enforcement or collection action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED UPON BY THE PARTIES, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

1 (b) action under 75-11-224."

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3 **Section 7.** Section 76-4-108, MCA, is amended to read:

4 **"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part
5 or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice
6 and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The
7 notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective
8 action required by the reviewing authority, and the time within which the action is to be taken. A notice and order
9 issued by the department under this section may also assess an administrative penalty as provided in 76-4-109.
10 The alleged violator may, no later than 30 days after service of a notice and order under this section, request
11 a hearing before the local reviewing authority if it issued the notice of violation or the board if the department
12 issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must
13 state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

14 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate
15 action to compel compliance with this part.

16 (3) The provisions of this part may be enforced by a reviewing authority other than the department or
17 board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce
18 the provisions of this part, the department or the board may compel compliance with this part under the
19 provisions of this section.

20 (4) When a local reviewing authority exercises the authority delegated to it by this section, the local
21 reviewing authority is legally responsible for its actions under this part.

22 (5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted
23 under this part, or an order issued under this part has occurred, the department or the local reviewing authority
24 may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written
25 notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request
26 a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and
27 must state the reason for the request. The hearing is before the board if the department revoked the certificate
28 or before the local reviewing authority if the local reviewing authority revoked the certificate.

29 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part
30 6, apply to a hearing held under this section."

Section 8. Section 76-4-109, MCA, is amended to read:

"76-4-109. Penalties. (1) A person ~~violating any~~ who violates a provision of this part, except 76-4-122(1), or ~~any a rule adopted or an~~ order issued under this part is guilty of an offense and subject to a fine of not to exceed \$1,000.

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule adopted or order issued under this part is subject to an administrative penalty not to exceed \$500 \$250 or a civil penalty not to exceed \$1,000 \$5,000 \$1,000. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies."

COORDINATION SECTION. SECTION 9. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 429 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE AMENDMENTS TO 75-10-228 IN BOTH HOUSE BILL NO. 429 AND [THIS ACT] ARE VOID AND 75-10-228 MUST READ AS FOLLOWS:

"75-10-228. Civil penalties. (1) A person who violates ~~any a~~ a provision of this part, a rule adopted or an order issued under this part, or a license provision is subject to an administrative penalty not to exceed \$250 or a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1 of House Bill No. 429].

~~(3)(4)~~ (4) Fines and penalties collected for violations of this part under this section must be deposited in the solid waste management account provided for in 75-10-117."

COORDINATION SECTION. SECTION 10. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 429 AND

[THIS ACT] ARE PASSED AND APPROVED, THEN THE AMENDMENTS TO 75-10-542 IN BOTH HOUSE BILL NO. 429 AND [THIS ACT] ARE VOID AND 75-10-542 MUST READ AS FOLLOWS:

"75-10-542. Penalties. (1) A person who ~~willfully~~ purposely or knowingly violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$250, ~~be~~ imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates a provision of this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ is subject to an administrative penalty of not more than \$250 ~~\$50~~ \$50 or a civil penalty of not more than ~~\$50~~ \$250. Each day upon which a violation of this part, ~~or~~ or a rule, ~~or~~ or an order occurs is a separate violation.

(3) Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in [section 1 of House Bill No. 429]. The penalties provided for in this section are recoverable in an enforcement or collection action brought by the department. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County."

COORDINATION SECTION. SECTION 11. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 429 AND [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 19(2)] OF HOUSE BILL NO. 429 IS VOID.

NEW SECTION. Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

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